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Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Notice – CG Docket 03-123

Dear Ms. Dortch:

In its unanimous November 2007 TRS Rate Methodology Order, the Commission repeatedly and unambiguously promised that it was adopting a three-year rate plan for video relay service ("VRS"), and that the principal reason for doing so was to ensure predictable, stable rates that would encourage providers to make long-term business plans and investments:

- VRS compensation rates "shall be effective for the 2007-2008 through 2009-2010 Fund years."[1]
- The FCC was "particularly interested in adopting a methodology that would result in more predictability for the providers."[2]
- "These [VRS] rates will be set for a three-year period."[3]
- "Commenters assert that a multi-year rate provides consistency that is necessary for planning and budgeting purposes, and avoids having to possibly adjust on short notice to a lower rate. We agree, and therefore conclude that the VRS tiers and rates will be adopted for a three-year period."[4]
- "These tiers and rates shall apply through the 2009-2010 Fund year."[5]

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1 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, ¶ 2 (2007), as corrected by Erratum, 22 FCC Rcd 21842 (2007).

2 *Id.* ¶ 11.

3 *Id.* ¶ 47.

4 *Id.* ¶ 56.

5 *Id.* ¶ 67.

- "The VRS . . . rates shall be set for three years, subject to certain annual adjustments."[6]

The Commission went to pains to emphasize that *"[a]t the end of the three-year period*, we will reassess what the tiers and rates shall be for the ensuing three-year period."[7]

The new rate plan took effect on March 1, 2008 and was scheduled to remain in effect through June 30, 2010. On May 14, 2009, however, the Commission released a one-paragraph Notice of Proposed Rulemaking (the "NPRM") seeking comment on whether the agency should abandon the new rate plan as early as July 1, 2009 – a full year before its promised expiration.[8] As Sorenson Communications, Inc. ("Sorenson") and others have explained, the mere release of this proposal – much less its adoption – portends dire consequences for members of the deaf and hard-of-hearing community.[9] Beyond these concerns, any decision to abandon the Commission's commitment to provide predictable payments for VRS on the basis of the vague one-paragraph NPRM would be arbitrary, capricious, or otherwise unlawful.[10]

On June 23, 2009, Pat Nola, Sorenson's President/CEO, Mike Maddix, Sorenson's Director of Government and Regulatory Affairs, and the undersigned, counsel for Sorenson, met with Acting Chairman Michael J. Copps and his legal advisor Scott Deutchman to re-emphasize these points and to urge the Commission to back away from the harmful path contemplated by the May 14 NPRM.

We discussed the detrimental effect of that NPRM on employment, investments, innovation and functional equivalence for deaf individuals who use American Sign Language to communicate. Mr. Nola described how Sorenson relied on the Commission's unanimous November 2007 commitment to a stable and predictable three-year VRS rate plan by increasing investments in several key programs:

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6 *Id.* ¶ 97.

7 *Id.* ¶ 72.

8 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Public Notice and Notice of Proposed Rulemaking, FCC 09-39, ¶ 11 (rel. May 14, 2009).

9 Letter from Sprint Nextel Corporation, Snap Telecommunications, Inc., Sorenson Communications, Inc., and Purple Communications, Inc., to Marlene H. Dortch, FCC Secretary, CG Docket No. 03-123 (May 1, 2009); Sorenson Motion to Rescind VRS Rate NPRM or, in the Alternative, to Extend the Comment Period, CG Docket No. 03-123 (May 19, 2009) ("Sorenson Motion").

10 *See* 5 U.S.C. § 706(2)(A); Sorenson Motion.

- **Increased outreach**, consistent with the mission of achieving 100% access to communication services for all Americans, including individuals who are deaf.[11]

- **Increased spending on research and development** for better call-routing software; enhanced safeguards to protect against waste, fraud and abuse; next-generation videophones; and a mobile VRS platform. Sorenson views these investments as part of the statutory mandate to offer functional equivalency.[12]

- **Increased efforts to locate, recruit and train American Sign Language interpreters** – who are in short supply. Currently, 40% of Sorenson's new interpreters come from its interpreter training programs.

- **Provided economic opportunity to deaf individuals** to install videophones and train and support consumers on VRS.

Mr. Nola explained that, with the Commission's threatened breach of its commitment to a fair and predictable three-year rate plan, he has directed a Sorenson team to evaluate what steps Sorenson may need to take in response. He described that the following are at stake:

- **American Sign Language Interpreters** – Sorenson may have to reduce or end efforts to locate, recruit, and train interpreters, despite the severe shortage of interpreters, and may have to eliminate some existing jobs. The consequences of such actions, if they became necessary, would include increased wait times for VRS callers and lower quality of service.

- **Economic Opportunity for Deaf Installers and Access to VRS** – Since VRS rates do not reimburse providers for installations of videophones and in-home customer education, these activities are near the top of the "cut" list. Eliminating these important outreach activities will reduce access to VRS. VRS videophones are typically installed by deaf individuals who rely on this employment as their only source of private income.

- **Research and Development** – Innovation and technological advancements are perhaps most at risk if the Commission were to breach its commitment to a long-term rate plan. Mobility for VRS is the biggest request by the deaf community, requiring substantial investment over a long-term budget and planning cycle. If Sorenson were forced to roll back its investments, the harmful consequences would include a retreat from functional equivalence, stalled development of next-generation technologies, and delays in providing mobility.

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11 *See* 47 U.S.C. § 225(b)(1).

12 *See id.* § 225(a)(3).

Mr. Nola noted that the Commission is at a crossroads, and can choose either of two distinctly different paths. On the one hand, the Commission can follow through on its threat to renege on its commitment to a stable, predictable three-year rate plan. Choosing that path would harm the Commission's credibility and cause potential reductions in interpreter training and jobs, increased wait times for callers, a stalled rollout of new videophones, delay in providing mobility, stagnation of innovation, loss of income by deaf individuals in a severe economic downturn, and a sharp retreat from functional equivalence. Alternatively, the Commission can keep its commitment to a fair, predictable rate plan, encourage investment and innovation, and further the Commission's mandate of achieving 100% access to communications for deaf individuals at functionally-equivalent quality.

This letter is being filed for inclusion in the public record of the above-referenced proceeding.

Sincerely,

/s/ Regina M. Keeney
Regina M. Keeney

cc: Acting Chairman Michael J. Copps
Scott M. Deutchman